



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**Region III**  
**1650 Arch Street**  
**Philadelphia, Pennsylvania 19103-2029**

OCT 15 2001

**NOTICE OF POTENTIAL LIABILITY**  
**URGENT LEGAL MATTER: PROMPT REPLY REQUIRED**  
**CERTIFIED MAIL: RETURN RECEIPT REQUESTED**

The Boeing Company  
Phillip M. Condit, CHB, CEO  
P.O. Box 3707  
Seattle, WA 98124-2207

Re: **Lower Darby Creek Area Superfund Site -  
Folcroft Landfill and Folcroft Landfill Annex  
Delaware County, Pennsylvania**

Dear Mr. Condit:

This letter notifies you that The Boeing Company, may incur, or may have incurred, liability under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607(a), with respect to the Lower Darby Creek Area Superfund Site ("Site"). This letter also notifies you of potential response activities at the Site, which you may be asked to perform or pay for at a later date if the United States performs them.

**SITE BACKGROUND**

CERCLA, more commonly known as Superfund, has several key objectives including setting priorities for cleanup of the worst hazardous sites in the country, and, determining the parties potentially responsible for investigating, cleaning up or paying the costs of cleaning up such hazardous sites. These parties are referred to as "potentially responsible parties" or "PRPs."

On June 14, 2001, the United States Environmental Protection Agency ("EPA") included the Site on the National Priorities List ("NPL"), a list of the most serious uncontrolled or abandoned sites at which releases of hazardous substances have occurred or may occur. The Site consists of the former Clearview Landfill, and the former Folcroft Landfill ("Folcroft") and

Folcroft Landfill Annex ("Annex"). This letter concerns only the Folcroft Landfill and Folcroft Landfill Annex. The Clearview Landfill will be addressed separately in the near future.

A large portion of the Folcroft Landfill and Annex is currently owned by the United States Department of Interior, Fish and Wildlife Service and is part of the John Heinz National Wildlife Preserve in Tinicum Township, Pennsylvania. A smaller portion of the Folcroft Landfill and Annex is privately owned.

### **NOTICE OF YOUR POTENTIAL LIABILITY**

EPA has evaluated information in connection with the investigation of the Site. Based on this information, EPA believes that The Boeing Company may be a PRP for this Site. PRPs under CERCLA include: 1) current owners and operators of the site; 2) owners and operators of the site at the time hazardous substances were disposed; 3) persons who arranged for disposal or treatment of hazardous substances sent to the site; and 4) persons who accepted hazardous substances for transport to the site, and who selected the site for disposal. These categories are set forth in Section 107 of CERCLA, 42 U.S.C. § 9607.

Based on State and Federal records and/or other information, EPA has information indicating that The Boeing Company is a PRP for this Site. Specifically, EPA has reason to believe that The Boeing Company is liable as a person who arranged for disposal of hazardous substances sent to the Folcroft Landfill and/or Folcroft Landfill Annex. The Boeing Company utilized the Folcroft Landfill and/or Folcroft Landfill Annex for disposal of its wastes between at least 1965 and 1969.

The EPA has documented the release or threatened release of hazardous substances, pollutants or contaminants at or from the Site, as those terms are defined in Sections 101(14) and 101(33) of CERCLA, 42 U.S.C. §§ 9601(14) and (33). The United States has spent, or is considering spending, public funds on actions to investigate and control such releases or threatened releases at the Site. Unless EPA reaches an agreement under which a PRP or PRPs will properly perform or finance such actions, the United States may perform these actions pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, or require them to be performed by responsible parties under Section 106 of CERCLA, 42 U.S.C. § 9606.

The United States may order PRPs, or any one of them, to perform response actions deemed necessary by the United States to protect the public health, welfare or the environment. Additionally, PRPs may be liable for all costs incurred by the government in responding to any release or threatened release at the Site, under Sections 104 and 107(a) of CERCLA, 42 U.S.C. §§ 9604 and 9607(a), and the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. §§ 6901 *et seq.*, and other laws. Such actions and costs may include, but are not limited to, conducting a Remedial Investigation/Feasibility Study ("RI/FS"), and other investigation, planning, response, oversight, and enforcement activities related to the Site. In addition, potentially responsible parties may be required to pay for damages for injury to,

destruction of, or loss of natural resources, including the cost of assessing the amount or extent of such damages related to a site.

You should also be aware that once a site is placed on the NPL pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, it cannot be deleted until after an RI/FS has been completed and the necessary remedial action has been conducted in accordance with EPA guidance and the National Contingency Plan ("NCP"), published at 40 C.F.R. Part 300.

By this letter, EPA notifies The Boeing Company of its potential liability with regard to this matter and encourages you to perform or to finance voluntarily those response activities that EPA determines to be necessary at the Site.

### **SITE RESPONSE ACTIVITIES**

In accordance with CERCLA and other authorities, EPA has already undertaken certain actions and incurred certain costs in response to conditions at the Site.

EPA involvement at Folcroft Landfill and Annex began with a Preliminary Assessment on July 1, 1980 and a Site Inspection ("SI") completed November 1, 1980. The Folcroft Landfill and Annex was reinspected as part of a Site Inspection of the entire Site completed on August 17, 1999. The Site was assigned a Hazardous Ranking System ("HRS") score of 50 and was proposed for National Priorities List ("NPL") on May 11, 2000. The Lower Darby Creek Area Superfund Site was officially added to the NPL on June 14, 2001.

The Boeing Company may be asked at a later date to undertake, or may be liable for, any additional measures necessary to protect public health, welfare, or the environment. Such measures may include but are not limited to designing and implementing the EPA-approved remedial option and providing monitoring and maintenance necessary after remedial measures are completed.

The United States may expend additional funds for response activities at the Site under the authority of CERCLA and other laws.

### **SPECIAL NOTICE AND NEGOTIATION MORATORIUM**

EPA anticipates that you will receive an additional notice from EPA in the future concerning the Folcroft Landfill and Folcroft Landfill Annex. The following four paragraphs are a detailed description of that future notice. You do not need to take any specific action regarding this future notice at this time. The description is provided to you here so that you can anticipate and understand the process.

The future notice will either inform you that EPA is using the CERCLA Section 122(e) special notice procedure to formally negotiate terms of a consent order or consent decree to

conduct or to finance Site response activities, or it will inform you that EPA is electing not to utilize that procedure. If EPA does not use the Section 122(e) special notice procedure, the notice will specify why special notice was not considered appropriate in this case.

Under Section 122(e), EPA has discretionary authority to use the special notice procedure if EPA determines that such procedure would facilitate an agreement between EPA and the PRPs and would expedite response action at the Site. Use of this special notice procedure triggers a moratorium on certain government activities at the Site. The purpose of the moratorium is to provide a period of time when PRPs and EPA may enter into formal negotiations for PRP conduct or financing of the response activities at the Site.

If special notice is provided with respect to the Remedial Investigation/Feasibility Study ("RI/FS") at the Site, the moratorium period, during which the United States, with certain exceptions, may not commence a RI/FS, lasts for 60 days after receipt of special notice. If EPA determines that a good faith offer to perform or to finance the RI/FS is submitted by the PRPs within those 60 days, the statute provides a 30-day extension for further negotiations.

If EPA determines that a good faith offer has not been submitted within the first 60 days of any moratorium period, EPA may terminate the negotiation moratorium pursuant to Section 122(e)(4) of CERCLA. The United States then may commence response activities or enforcement actions as it deems appropriate. In the absence of an agreement with the parties to perform or to finance the necessary response activities, the United States may undertake these activities and pursue civil litigation against the parties for reimbursement of Site expenditures. Alternatively, the United States may issue a unilateral administrative order pursuant to Section 106(a) of CERCLA to require PRPs to initiate response activities, and/or may commence civil litigation pursuant to Section 106(a) of CERCLA to obtain similar relief. Failure to comply with an administrative order issued pursuant to Section 106(a) of CERCLA may result in a fine of up to \$27,500 per day, pursuant to Section 106(b) of CERCLA and 40 C.F.R. Part 19, and/or imposition of treble damages, pursuant to Section 107(c)(3).

The preceding explanation of special notice and the negotiation moratorium procedure is for your general information about the Superfund process. It does not require any specific action on your part at this time. (But see PRP Response and EPA Contact sections, below.)

### **FUTURE FINANCIAL REVIEW**

If The Boeing Company wishes to settle, but you believe The Boeing Company would face a severe financial hardship by remitting the full payment amount, you may request that the EPA review your financial ability to pay. Under EPA policy, it is also possible in appropriate circumstances for payment to be made in installments. This may be considered as part of EPA's financial review. To process a claim of financial hardship, EPA will require you to substantiate that claim by submitting detailed financial documentation.

## **INFORMATION TO ASSIST RESPONSIBLE PARTIES**

EPA encourages good faith negotiations between the PRPs and EPA, as well as among the PRPs. Therefore, EPA is providing a list of the names and addresses of PRPs to whom this notification is being sent or who have previously been notified as an attachment to this letter. This list represents EPA's preliminary findings on the identities of the PRPs for the Folcroft Landfill and Folcroft Landfill Annex portions of the Site. Inclusion on, or exclusion from, the list does not constitute a final determination by EPA concerning the liability of any party for the release or threat of release of hazardous substances at or from the Site.

### **PRP STEERING COMMITTEE**

EPA recommends that all PRPs meet to select a Steering Committee responsible for representing the group's interests. Establishing a manageable group is very important for successful negotiations with EPA. EPA representatives are available to meet or confer with the PRPs or a steering committee on a mutually convenient date in the near future.

### **ADMINISTRATIVE RECORD**

Pursuant to CERCLA Section 113(k), 42 U.S.C. §9613(k), the United States establishes an administrative record that contains documents which form the basis for the United States' decision on the selection of each response action for a site. The administrative record will be available to the public for inspection and comment before any remedy is selected by the United States. A copy of the record will be located near the Site, and another copy will be located at the EPA Regional office in Philadelphia. The contact person for comments on the record will be provided with the record when such record is available for review at these locations.

### **PRP RESPONSE AND EPA CONTACT**

You are encouraged to contact EPA in writing within **fourteen (14) days** of the receipt of this letter to express The Boeing Company's willingness or unwillingness to participate in future negotiations concerning this Site. You may respond individually or through a steering committee if such a committee has been formed. Your response will be considered by EPA in determining whether the special notice procedure should be used for this Site.

If you are already involved in discussions with State or local authorities, engaged in voluntary action or involved in a lawsuit regarding this Site, you should not interpret this letter as advising or directing you to restrict or to discontinue any such activities. You should, however, report the status of those discussions or activities in your letter to EPA. Please provide EPA with a copy of your letter to any other party involved in those discussions.

Your response should be addressed to:

Ms. Kristine Matzko (3HS23)  
Remedial Project Manager  
United States Environmental Protection Agency  
1650 Arch Street  
Philadelphia, PA 19103

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be, and cannot be relied upon, as a final EPA position on any matter set forth herein.

If you have any questions regarding the foregoing, please contact Carlyn Winter Prisk, Civil Investigator, at (215) 814-2625 or have your attorney contact Brian Nishitani, Senior Assistant Regional Counsel, at (215) 814-2675.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Ferdas', is written over a horizontal line.

Abraham Ferdas, Director  
Hazardous Site Cleanup Division

Enclosure

cc: Craig Olewiler (PADEP)  
Kristine Matzko, (3HS23)  
Brian Nishitani (3RC44)  
Carlyn Winter Prisk (3HS11)  
Taralyn Trimpey, Counsel, The Boeing Company

Attachment 1

**PRPs receiving Notice of Potential Liability for the  
Folcroft Landfill and Folcroft Landfill Annex portions of the  
Lower Darby Creek Area Superfund Site**

**The Boeing Company**

P.O. Box 3707  
Seattle, WA 98124-2207

Legal Contact: Taralyn Trimpey, Counsel  
P.O. Box 516  
Mail Code S100-3340  
St. Louis, MO 63166-0516  
(314) 232-3269

**Browning-Ferris Industries, Inc.**

c/o Allied Waste Systems, Inc.  
15880 N. Greenway-Hayden Loop,  
Suite 200  
Scottsdale, AZ 85260

Legal Contact: Jeffrey N. Martin, Esq.  
Hunton & Williams  
1900 K. Street, NW  
Washington, DC 20006  
(202) 955-1552

**Delaware County Solid Waste Authority**

1521 North Providence Road  
Rose Tree Park  
Hunt Club Building  
Media, PA 19063

**E.I. duPont de Nemours and Company**

1007 Market Street  
Wilmington, DE 19899

Legal Contact: Pamela Meitner, Esquire  
DuPont Legal, D-7099  
1007 Market Street  
Wilmington, De 19898  
302-774-8720

**FMC Corporation**

200 E. Randolph Drive  
Chicago, IL 60601

Legal Contact: John F. Stillman, Assistant General Counsel  
1735 Market Street  
Philadelphia, PA 19103  
(215) 299-6989

**General Electric Company**

3135 Easton Turnpike  
Fairfield, CT 06413-0001

Legal Contact: David Rifkind, Counsel-Environmental Matters  
640 Freedom Business Center  
King of Prussia, PA 19406

**Wilbur C. Henderson, Jr.**

c/o The Henderson Group  
112 Chesley Drive, Suite 200  
Media, PA 19063-1762

Legal Contact: Norman C. Henss, General Counsel  
The Henderson Group  
112 Chesley Drive, Suite 200  
Media, PA 19063-1762  
(610) 627-3619

**Henderson-Columbia Corporation**

c/o The Henderson Group  
Wilbur C. Henderson, Jr.  
112 Chesley Drive, Suite 200  
Media, PA 19063-1762

Legal Contact: Norman C. Henss, General Counsel  
The Henderson Group  
112 Chesley Drive, Suite 200  
Media, PA 19063-1762  
(610) 627-3619



**Honeywell International, Inc.**

101 Columbia Road  
Morristown, NJ 07962

Legal Contact: David Cook, Assistant General Counsel  
101 Columbia Road  
Morristown, NJ 07962  
(973) 455-2817

**PECO Energy Company**

c/o Exelon Corporation  
37<sup>th</sup> Floor, 10 South Dearborn Street  
Post Office Box A-3005  
Chicago, IL 60690-3005

Legal Contact: H. Alfred Ryan, Assistant General Counsel  
Exelon Business Services Company  
2301 Market Street (S23-1)  
P.O. Box 8699  
Philadelphia, PA 19101  
(215) 814-6855

**Rohm and Haas Company**

100 Independence Mall West  
Philadelphia, PA 19106

Legal Contact: Ellen S. Friedell, Associate General Counsel  
100 Independence Mall West  
Philadelphia, PA 19106  
(215) 592-2582

**United States Department of the Interior**

Fish and Wildlife Service  
1849 C. Street NW, Room 3012  
Washington, DC 20240-0001

Legal Contact: Mark Barash, Esquire  
Office of the Solicitor  
1 Gateway Center, Suite 612  
Newton, MA 02458  
(617) 527-3400

**Waste Management, Inc.**


1001 Fannin Street  
Suite 4000  
Houston, TX 77002

Contact: Steve Joyce, Area Director  
4 Liberty Lane West  
Hampton, NH 03842

Legal Contact: Joseph O'Dea, Esq.  
Saul Ewing  
Centre Square West  
1500 Market Street  
38<sup>th</sup> Floor  
Philadelphia, PA 19102-2186

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029**

**SUBJECT:** Lower Darby Creek Area Superfund Site  
Folcroft Landfill and Folcroft Landfill Annex  
Modifications to the Model General Notice Letter

**FROM:** Brian M. Nishitani   
Senior Assistant Regional Counsel (3RC44)

**TO:** Abraham Ferdas  
Director, Hazardous Site Cleanup Division (3HS00)

10/11//01

Since most of the Folcroft Landfill and Folcroft Landfill Annex (collectively referred to as "Folcroft") are currently owned by the United States and under the jurisdiction of the US Fish and Wildlife Service ("FWS"), these parcels are a "Federal facility." FWS is the lead agency for implementation of CERCLA at these portions of the Lower Darby Creek Area site. (For the non-Federally owned portion of the Folcroft and for the Clearview Landfill, which are privately owned, EPA is the lead agency.)

EPA's role at Federal facilities is a consultative one, with certain exceptions: EPA does sign Records of Decision and, under CERCLA Section 120(e)(6), can enter into settlements, pursuant to CERCLA Section 122, with private parties determined to be potentially responsible parties. To engage in the CERCLA Section 122 settlement process for Folcroft, EPA must make certain modifications to model documents to account for the fact that FWS is the lead agency.

In the General Notice Letter, the term "United States" is substituted for "EPA" where the delegation of CERCLA authorities is to FWS rather than to EPA. Also, the description of the Special Notice Letter moratorium period provided for in CERCLA Section 122(e)(2)(A), is modified to fit the special circumstances.

Normally, in accordance with CERCLA Section 120(e)(1), within 6 months after inclusion of any facility on the NPL, the lead agency must commence a RI/FS. In the alternative, in accordance with CERCLA Section 120(e)(6), EPA can reach a settlement with private PRPs within the same 6 month period. Given the history and complexities of Folcroft, EPA could not perform a PRP search and send out notice letters within a time frame that will allow for the negotiation of a settlement (a AOC for RI/FS) by the 6 month deadline.

As a result, EPA is working with FWS to commence a portion of the RI/FS, for purposes of satisfying the CERCLA Section 120(e)(1) deadline. If and when EPA decides to issue Special



Notice Letters, the United States will either cease all ongoing RI activities or will refrain from performing those RI activities which it seeks to have the private PRPs perform. By this process, the United States will address the moratorium requirement of CERCLA Section 122(e)(2)(A). This approach will then be reflected in the appropriate portions of the model notice letters.

In addition to the signature copies of the notice letters, a comparison version of a notice letter is enclosed to show where changes to the model letter were made.

ORIGINAL  
(Red)

Comparison  
(info) - finding changes  
to the Model

**NOTICE OF POTENTIAL LIABILITY**  
**URGENT LEGAL MATTER: PROMPT REPLY REQUIRED**  
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Rohm and Haas Company  
Rajiv Gupta, CEO  
100 Independence Mall West  
Philadelphia, PA 19106

Re: **Lower Darby Creek Area Superfund Site -  
Folcroft Landfill and Folcroft Landfill Annex  
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(1/23/03)

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ORIGINAL  
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Philadelphia, PA 19103

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be, and cannot be relied upon, as a final EPA position on any matter set forth herein.

If you have any questions regarding the foregoing, please contact Carlyn Winter Prisk, Civil Investigator, at (215) 814-2625 or have your attorney contact Brian Nishitani, Senior Assistant Regional Counsel, at (215) 814-2675.

Sincerely,

Abraham Ferdas, Director  
Hazardous Site Cleanup Division

Enclosure

cc: Craig Olewiler (PADEP)  
Kristine Matzko, (3HS23)  
Brian Nishitani (3RC44)  
Carlyn Winter Prisk (3HS11)  
Ellen S. Friedell, Associate General Counsel, Rohm and Haas Company

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